

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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|---------------------------|---|-------------------------------|------------------|
| JAMES E. FLEMING, |) | CASE NO. | C05-1685-MJP-MAT |
| |) | | (CR95-388-MJP) |
| Petitioner, |) | | |
| |) | | |
| v. |) | | |
| |) | ORDER FOR SERVICE AND RETURN, | |
| UNITED STATES OF AMERICA, |) | § 2255 MOTION | |
| |) | | |
| Respondent. |) | | |
| _____ |) | | |

Petitioner has filed a Motion under 28 U.S.C. § 2255. It is therefore ORDERED:

(1) The Clerk shall arrange for service by first class mail upon the United States Attorney of copies of the Motion and of this Order, and shall direct a copy of this Order and of the General Order to petitioner.

(2) Within **thirty (30) days** after such service, the United States shall file and serve an Answer in accordance with Rule 5 of the Rules Governing Section 2255 Cases in United States District Courts. As part of such Answer, the United States should state its position as to whether an evidentiary hearing is necessary and whether there is any issue as to abuse or delay under Rule 9. The United States shall file the Answer with the Clerk of the Court and serve a copy of the

01 Answer upon petitioner.

02 (3) The Answer will be treated in accordance with Local Rule CR 7. **Accordingly,**
03 **on the face of the Answer, the United States shall note it for consideration the fourth Friday**
04 **after it is filed, and the Clerk shall note the Answer accordingly.** Petitioner may file and serve
05 a response not later than the Monday immediately preceding the Friday appointed for
06 consideration of the matter, and the United States may file and serve a reply brief not later than
07 the Friday designated for consideration of the matter. (This is a new provision, as previously all
08 replies were required to be filed on the day before the noting date). See also Section 4, concerning
09 filing and service in general.

10 (4) **Filing and Service by Parties, Generally** . All attorneys admitted to practice
11 before this Court are required to file documents electronically via the Court's CM/ECF system.
12 Counsel are directed to the Court's website, www.wawd.uscourts.gov, for a detailed description
13 of the requirements for filing via CM/ECF. All non-attorneys, such as *pro se* parties and/or
14 prisoners, may continue to file a paper original of any document for the Court's consideration.
15 All filings, whether filed electronically or in traditional paper format, must indicate in the upper
16 right hand corner the name of the Magistrate Judge to whom the document is directed.

17 Additionally, any document filed with the Court must be accompanied by proof that it has
18 been served upon all parties that have entered a notice of appearance in the underlying matter.
19 The proof of service shall show the day and manner of service, and shall be provided in the form
20 of either a signed certificate (for admitted attorneys of the bar of this Court), or by signed affidavit
21 (for any non-attorney who served the document).

22 For electronic filers, the deadline for filing the answer is 11:59 p.m. on the thirtieth (30)

01 day after service. If a party files a paper original (i.e. *pro se* and/or prisoner), the opposition to
02 respondent's answer must be received in the Clerk's office by 4:30 p.m. on the Monday preceding
03 the date of consideration (as noted on the first page of respondent's answer). If a party fails to
04 file and serve timely opposition to a motion, the court may deem any opposition to be without
05 merit.

06 (5) Motions

07 Any request for court action shall be set forth in a motion, properly filed and served.
08 Pursuant to amended Local Rule CR 7(b), any argument being offered in support of a motion shall
09 be submitted as a part of the motion itself and not in a separate document. **The motion shall**
10 **include in its caption (immediately below the title of the motion) a designation of the date**
11 **the motion is to be noted for consideration upon the court's motion calendar.**

12 Stipulated and agreed motions, motions to file overlength motions or briefs, motions for
13 reconsideration, joint submissions pursuant to the option procedure established in CR37(a)(2)(B),
14 motions for default, requests for the clerk to enter default judgment, and motions for the court to
15 enter default judgment where the opposing party has not appeared shall be noted for consideration
16 on the day they are filed. *See* Local Rule CR 7(d)(1). All other non-dispositive motions shall be
17 noted for consideration no earlier than the third Friday following filing and service of the motion.
18 *See* Local Rule CR 7(d)(3). All dispositive motions shall be noted for consideration no earlier than
19 the fourth Friday following filing and service of the motion. See also Section 4, concerning filing
20 and service in general.

21 (6) Direct Communications with District Judge or Magistrate Judge

22 No direct communication is to take place with the District Judge or Magistrate Judge with

01 regard to this case. All relevant information and papers are to be directed to the Clerk.

02 (7) The Clerk is directed to send a copy of this Order to the Hon. Marsha J. Pechman.

03 DATED this 18th day of October, 2005.

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05 Mary Alice Theiler
06 United States Magistrate Judge
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